IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4196 OF 2007

Rajendra Shankar Padman)
Age 31 years, residing at)
Pushpanjali Niwas, KL Colony,)
New Mahatma Gandhi Nagar,)
Thane (East).)..Petitioner

Versus

1.The State of Maharashtra)
through) Secretary Urban)
Development Department,)
Mantralaya, Mumbai.)
2.The Election Commission)
through the Election)
Commissioner, State of)
Maharashtra, Mantralaya,)
Mumbai)
3.Thane Municipal Corporation)
through its Municipal)
Commissioner having its)
office at Thane.)..Respondents

Mrs. Neeta P. Karnik for the Petitioner
Mr. A.A. Kumbhakoni, Associate Advocate General with

Mr. V.P. Malwankar, AGP for the Respondent No.1.

Ms. Deepti N. Wadkar with Mr. S.B. Shetye for the Respondent No.2.

Mr. R.S. Apte for the Respnodent No.3.

CORAM : F.I. REBELLO &
R.M.SAVANT,JJ.
DATED : 28TH JUNE, 2007

JUDGMENT (PER F.I. REBELLO, J.):

. Rule. Heard forthwith.

2. The petitioner has approached this Court contending that he is a social worker of a registered non-Governmental organisation named Samata Vichar Prassarak Sanstha. There are several legislations in the State of Maharashtra regulating the functioning of local municipal bodies. The petition does not disclose whether the petitioner is a resident within the area of the Municipal Corporation of Thane and/or a rate payer. The elections were held to the Thane Municipal Corporation along with several other Municipal Corporations. One hundred and sixteen Corporators came to be elected to the Thane Municipal Corporation. Apart from elected Corporators there is also provision for nomination of Coucillors. The Government had earlier notified by Notification of 13th December, 1996 the Maharashtra Municipal Corporations, Municipal Councils and

Nagar Panchayats (Qualifications, election and appointments of nominated Councillors) Rules, 1995, hereinafter referred to as the 1995 Rules. In terms of Rule 3, the Corporation or Council were to nominate Councillors not exceeding 10% of the total number of elected Councillors or five or whichever is less at its first meeting after general elections. Under Rule 4 qualifications were laid down and they read as under:-

> "4. Qualification for nomination.-Any person who fulfils any of the following conditions shall be eligible for being nominated as a candidate for the office of the nominated Councillor.--
>
> (a) has an experience as a medical practitioner in a municipal hospital for not less than five years;
>
> (b) has an experience of not less than five years, as a member of recognised non-Government Organisations and community based organisations engaged in Social Welfare activities working within the area of the Municipal Corporation or Council;
>
> (c) has an expertise in the field of municipal laws or labour laws in respect of municipal workers;
>
> (d) has been a Councillor for not less than five years;

(e) has an experience of working for not less than two years as a Municipal Commissioner; or

(f) has an experience of working for not less than five years as a Chief Officer of a Council or as a Deputy or Assistant Municipal Commissioner in a Corporation."

. Any person so qualified, could be proposed as a candidate for being elected as a Councillor for contesting these seats.

3. It is the case of the petitioner that after the Corporation Elections which were held on 1st March, 2007 to the Respondent No.3 Corporation, the elections to the post of Mayor and Deputy Mayor were held. Nomination of five Councillors to Respondent No.3 and other Municipal Corporations were about to start as per Notification dated 13th December, 1996. The respondent No.1 however, issued a Notification on 21st February, 2007 whereby the notification of 13th December, 1996 came to be cancelled and new Rules were notified known as "Maharashtra Municipal Corporations (Qualifications and appointment of nominated Councillors) Rules, 2007. Under Rule 3, power was conferred on the Mayor in the first meeting of the Corporation after general elections to nominate such number of Councillors not exceeding 10% of the total number of elected Councillors or

five, whichever is less. Rule 4 provided qualification for nomination. These qualifications are same or similar as notified in the Rules of 1995. Under Rule 5 unlike the earlier procedure of filing nominations, the nominations by the Mayor had to be done taking into account the relative strength of recognised parties or registered parties or groups and to nominate the members, as nearly as may be, in proportion to the strength of such parties or groups in the Corporation, after consulting the Leader of the House, Leader of Opposition and Leader of each of such party or group. It is the case of the petitioner that these Rules were challenged by way of Writ Petition No.896 of 2997 at Nagpur Bench of this Court. A learned Bench of this Court by order dated 2nd March, 2007 noted that Section 9(1)(b) of the City of Nagpur Corporation Act, 1948 contemplated nomination of Councillors in the manner prescribed therein by the Corporation as defined under Section 5(12) of the City of Nagpur Corporation Act, 1948. The Court then noted that Rule 3 as well as Rule 5 of 2007 Rules purport to authorise the Mayor to nominate. and these Rules are in direct repugnancy with Section 9(1)(b) of the City of Nagpur Corporation Act, 1448 as the power is vested by the Statute is taken away from one Authority and is being vested in another and, therefore, ordered that effect of Rules requires to be stayed.

5. Subsequent to this interim order dated 2nd March, 2007, by Notification of 21st April, 2007, Rules 3, 5 and 6

of the 2007 Rules either came to be amended or substituted. The effect of the amendment and substitution of Rules 3 and 5 was that the word "Mayor" was omitted and in its place the word "Corporation" was substituted. In Rule 3 and in Rule 5(1) it was the Commissioner who was conferred the power. Sub-section (2) was introduced whereby the Corporation after considering the recommendations by the Commissioner was to nominate the Councillors.

6. By the present petition what the petitioner prays is for a writ of mandamus or any other writ, direction or order in the nature of mandamus to hold the impugned notification dated 21st February, 2007 and 21st April, 2007 issued by the State Government as illegal and bad in law. That the impugned notification dated 21st February, 2007 and 21st April, 2007 be quashed and for the further direction to announce the programme for nomination of co-opted members to the respondent No.3 Corporation afresh as per the notification dated 13th December, 1996 and to complete and conclude the same. If the reliefs prayed for are considered the proper relief ought to have been to seek a declaration that the Rules of 21st February, 2007 and 21st April, 2007 for whatever reasons are illegal being contrary to the provisions of the Statute. That relief has not been prayed. That, however, should not detain us from considering the challenge as contained in these Rules.

7. Though various grounds have been raised learned

Counsel urged the following contentions:-

. It is firstly submitted that the object of providing for nomination was to bring in experience of specialist or persons engaged in social welfare to the Municipal Corporation. It is submitted that by the Rules of 2007 and further amendment of 2007 this object is set at naught. Now the entire exercise is of the political parties manipulating their strengths with political motives and as such is contrary to the provisions of law and unsustainable.

. In so far as this submission is concerned, we may note that the qualifications prescribed for nomination whether in the Rules of 2005 or Rules notified on 21st February, 2007 are the same. It is the same category of persons either under the Rules of 1995 or 2007 as set out therein who alone are eligible for being nominated. What has changed is the procedure for nomination. Under Rules of 1995 nomination was by voting on a candidate being proposed by an elected Councillor. Under the new Rules the nomination is to be done based on the respective strength of the recognised parties or groups in the Corporation. In other words from direct elections to nomination on the basis of the number of members of recognised or registered political party or group. The seats are to be filled by nomination from amongst registered or recognised parties or recognised groups based on their respective strength in the house. This is in the nature of proportional representation. No

doubt this gives a go-bye to the procedure for elections as provided in the 1995 Rules and provides a method of nomination by the registered or recognised political parties or groups from amongst candidates who have the qualifications as set out in the rule. In otherwords instead of Councillors voting, the leader of the respective parties, will decide, who would be the nominated councillors. The challenge is that this gives a go-bye to the experience of specialist or social worker. In our opinion as earlier pointed out, the qualifications for nomination remain the same. There has ben no departure in so far as the qualifications are concerned in the Rules of 2007. The apprehension that political parties would be manipulating their strength with political motives to our mind is too vague. The Act itself recognises, registered and recognised political parties and recognised groups. The very basis of our Parliamentary Democracy is representaltion by political parties. The new Rule does not do away with the requirement of political parties keeping away experts who possess the qualifications in terms of Rule 4 of 2007 Rules. Merely because they are nominated by the political parties or groups or because they may belong to or affiliated to a political party or group does not make the Rule manifestly arbitrary. In our opinion the challenge as made is devoid of substance.

6. It is next submitted that under Section 5 of the Bombay Provincial Municipal Corporation Act, an individual

had a right of nomination and the procedure was by secret ballot. A perusal of the relevant Section does not indicate that the procedure for nomination has been set out therein. The Section only provides for nomination. A Power is conferred under the Act on the State Government to make Rules. The earlier Rules made in 1995 provided a procedure for election. That procedure has now been substituted by nomination, based on the respective strength of the political parties. In other words proportional representation. Section 5 by itself contemplate nomination. Nothing has been brought to our attention or material produced as to why such a Rule is ultra vires the provisions of Section 5 and/or that it is unreasonable or manifestly arbitrary. In the absence of any material and/or contention in our opinion it will not be possible to accept the bald challenge as made by the petitioner.

7. It was next submitted that Notification of 21st April, 2007 is contemptuous of the interim order passed by the Division Bench of this Court at Nagpur dated 2nd March, 2007 in Writ Petition No.896 of 2007. In our opinion the learned Division Bench only observed that considering the Rules as they stood, the elections could not be proceeded and restrained the respondent No.4 therein from holding the elections based on the rules then in force. What the delegate has done and it could unquestionably do was to remedy the defect in the Rules. This cannot be said to be contemptuous. The Rule making authority exercising its

legislative functions can always exercise those powers. Courts cannot restrain the exercise of such power. All that the Court would do is to examine whether the powers as exercised is malafide and/or the Rule as made is ultra vires the parent Act or in violative of Part -III of the Constitution of India or any other constitutional provisions and/or manifestly arbitrary or unreasonable. The contention, therefore, as urged in our opinion is devoid of any merit.

8. It was also sought to be contended that the Legislative Assembly of the State of Maharashtra was in Session and inspite of that the Rules for nomination were notified. In our opinion there is nothing which prohibits the delegate from exercising its Rule making power when the Assembly of a State is in Session. The only constitutional prohibition is of making an Ordinance when the Assembly is in Session. The Rule making authority exercises the power conferred by the very Assembly, is not prohibited from making Rules whether during the sitting of the Assembly or otherwise. The Rule making power many a times is controlled by the Rules required to be tabled in the Assembly. At any rate no constitutional provision or statutory provision has been brought to our attention which restrains a delegate conferred with the Rule making power from exercising such power when the Legislative Assembly of a State is in Session or even Parliamentary practice if it can be considered. That contention has to be rejected.

8. We may also note that by amendment to the Act the procedure for nominating the members to the various Select Committees of the House has now been provided based on the respective strength of the recognised or registered political party and/or group. The present Rule is only an extension of the said procedure whereby instead of election nomination based on the respective strength of the political party is followed. This is nothing but a system of proportional representation which is followed by many democratic countries. There can be no prohibition in following known and recognised democratic procedure, as long as that is not ultra vires the Act and/or violation of the Constitution.

9. For all the aforesaid reasons we find no merit in this petition and consequently Rule is discharged. No order as to costs.

(R.M. SAVANT, J.) **(F.I. REBELLO, J.)**